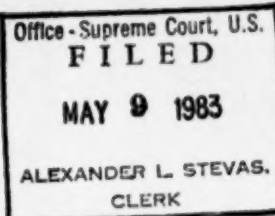


NO. 82-6274



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

HURIE JONES

Appellant

VS.

ORLEANS PARISH SCHOOL BOARD

Appellee

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS, FIFTH CIRCUIT

BRIEF IN OPPOSITION

CHARLES T. CURTIS, JR.
POLACK, ROSENBERG, RITTENBERG,
& ENDOM
938 Lafayette Street
New Orleans, Louisiana 70113
Telephone: (504) 581-1422
Attorneys for Appellee,
Orleans Parish School Board

TABLE OF CONTENTS

	PAGES
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
JURISDICTION OF THE COURT	1
STATEMENT OF CASE	2
SUMMARY OF ARGUMENTS	4
ARGUMENT 1	5
ARGUMENT 2	5
ARGUMENT 3	6
CONCLUSION	6
CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITIES

CASES	PAGES
<i>Page v. U.S. Industries, Inc.</i> , 566 F.2d. 346 (5th Cir.,1977) Cert denied 434 U.S. 1045 S. Ct. 890, 54 L.ed. 2d 796 (1978)	5
<i>Braden v. Texas A&M University System</i> , 636 F. 2d 90 (5th Cir.,1981)	5
<i>Heyn v. Board of Supervisors of Louisiana State University</i> , 417 F. Supp. 603 (N.D. La. 1976) aff'd, 550 F. 2d 1282 (5th Cir.,1977)	5
<i>DeAnda v. St. Joseph Hospital</i> , 617 F. 2d 850, 854 n.6 (5th Cir.,1982)	5
<i>Daly v. Sprague</i> , 675 F. 2d 716 at 722 (5th Cir.,1982)	6

STATUTORY AUTHORITIES	PAGES
28 USCA Section 1331 and 1343	1
28 USCA Section 1254(1)	1
28 USCA Section 2103	2
Supreme Court Rule 22, 16	2
42 USCA Sections 1981, 1983, 1985	4
42 USCA Section 2000e	4
La. Civil Code Article 3536	4,5

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

HURIE JONES,

APPELLANT

VS.

ORLEANS PARISH SCHOOL BOARD,

APPELLEE

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS, FIFTH CIRCUIT

BRIEF IN OPPOSITION

JURISDICTION OF THE COURT

Appellant has invoked the jurisdiction of the United States Supreme Court pursuant to 28 USCA §1331 and 1343. See Page 1 of Appellant's Jurisdictional Statement.

Appellee contends that this Honorable Court has jurisdiction over this matter pursuant to 28 USCA §1254 (1); and, therefore, the review by this Court should be by a writ of certiorari and not by appeal.

Appellee therefore requests that this Court apply the provisions of 28 USCA §2103 and treat appellant's appeal and jurisdictional statement filed herein as a petition for writ of certiorari. Appellee files herein a brief in opposition pursuant to the rules of Supreme Court Rule 22 instead of a motion to dismiss or affirm pursuant to Rule 16.

STATEMENT OF CASE

Appellant was first employed by appellee Orleans Parish School Board effective August 29, 1966. Appellant was notified that he had acquired tenure rights under the provisions of Title XVII, Section 461, Louisiana Revised Statutes of 1950, by letter dated October 28, 1969, from Mr. Alfred B. Hebeisen, then Assistant Superintendent for Personnel. Appellant remained in the active employ of appellee until August 28, 1972. At that time he requested a special leave of absence for personal reasons. On October 20, 1972, appellant requested a sabbatical leave for the purpose of taking education and administration graduate courses at Southern University in Baton Rouge. Appellant was granted sabbatical leave from January 23, 1973, until January of 1974. Appellant returned to his teaching duties in January of 1974 and was assigned to the Samuel J. Green Junior High School located at 2319 Valence Street, New Orleans, Louisiana, 70115. Appellant again requested another leave without pay from June, 1974, through May, 1975, "to settle personal and family related business." On July 26, 1974, appellee notified appellant that this leave of absence without pay was granted.

"With the explicit understanding that there will be no extensions authorized for the leave and that you will notify me (the Assistant Superintendent for Personnel) no later than June 1, 1975, whether you are returning to a teaching assignment for the 1975-76 year or whether you are resigning your position."

On May 30, 1975, appellant, by certified mail, notified appellee, "It is my irrevocable intention to return to my teaching duties for the 1975-76 school year." On June 4, 1975, appellee wrote appellant a letter which read in part as follows:

"If you desire to return from leave, the enclosed medical form must also be completed by you and your attending physician. When completed, please bring the medical form into the Division of Personnel in person so that you may be interviewed regarding your return from leave."

This June 4 letter also contained a tear-off sheet whereon appellant was to state his intention to return or not and to identify his current address. Appellant signed the form indicating that he would return to teaching. For some unknown reason, appellant put the address of S. J. Green Junior High School, 2319 Valence Street, on the form instead of his home address. Appellant then returned the form to appellee.

On August 24, 1975, appellant again wrote appellee as follows:

"I am scheduled to return to teaching duties in the Fall of 1975, and having complied with all prerequisites thereto, I am still waiting for an assignment to a teaching position."

Appellant's original complaint alleges that on June 10, 1975, he mailed the required executed medical form to the Orleans Parish School Board. However, in his deposition appellant testified that he did not recall whether he mailed or delivered the medical form. Appellant testified at trial, after being extremely evasive, that he personally brought the medical form to the medical department. However, he could not remember where he actually allegedly brought the form. Gene Hassinger, M.D., house doctor for appellee, testified under direct examination that her office never received a medical report from appellant. It is submitted that appellant never delivered the medical form to appellee as required in appellee's letter of June 4, 1975. It is further submitted that appellant never came to the Division of Personnel in person so that he could be interviewed regarding his return from leave. The only action which appellant took to return to his job were his letters of May 29 and August 24. Appellant further testified that he made a few phone calls to the Central Office; however, this allegation is unsubstantiated. In truth and in fact appellant was attending law school during his sabbatical leave and leaves without pay and returned to law school in September, 1975, and graduated in May, 1976.

Mr. Alfred Hebeisen, then Assistant Superintendent of Personnel for the Orleans Parish School Board, testified that appellant by failing to personally come to the Personnel Office for a return to work interview as required by School Board policy and set forth in his letter of June 4, 1975, "abandoned" his tenured teaching position. On February 2, 1976, Mr. Hebeisen wrote appellant to:

"Notify me by return mail any explanation you have to offer concerning your failure to return from your leave of absence...but in the absence of an acceptable explanation, I will, of necessity, recommend your termination..."

On February 18, 1976, Mr. Hebeisen again wrote appellant advising that he had abandoned his position as a teacher. Both of these letters were sent to the address supplied by appellant which was the address of the Samuel J. Green Junior High School and therefore returned to appellant undelivered. After several attempts to reach appellant which were fruitless, the Orleans Parish School Board met and routinely terminated appellant on March 9, 1976. Appellant filed suit on August 19, 1977, a period of almost one and one-half years after his termination, alleging that he had been discharged unlawfully on the basis of his race and that he had been denied due process pursuant to 42 U.S.C.A. §§1981, 1983 and 1985 and 42 U.S.C.A. §2000e et seq.

The District Court accepted the Magistrate's recommendation and rendered judgment for the School Board and Jones appealed. The United States Court of Appeals for the Fifth Circuit affirmed after panel rehearing. The Magistrates Finding and Recommendation as well as the opinions of the Court of Appeals may be found in the appendix of appellant's jurisdictional statement.

SUMMARY OF ARGUMENT

1.

Appellant's claim under 42 USCA §§1981, 1983 and 1985 are barred by the Louisiana one year Statute of Limitations, Louisiana Civil Code, Art. 3536.

2.

Appellant's Title VII claim was properly dismissed.

3.

Appellant's state law claims were not properly presented in the District Court and therefore those issues were not before the Court on appeal.

ARGUMENT

1.

Because Congress did not establish a limitation period for §§1981, 1983 and 1985 actions, Federal Courts apply the state law of limitations governing analogous causes of action. As clearly stated in the well reasoned opinion of the District Court and Court of Appeals such claims are best characterized under Louisiana law as a tort and should be governed by the one year limitations period of Louisiana Civil Code Article 3536. Page v. U.S. Industries, Inc., 556 F.2d 346 (5th Cir., 1977) Cert denied 434 U.S. 1045 98 S. Ct. 890, 54 L.ed. 2d 796 (1978). Further, appellant's claim of denial of his rights to due process in violation of §1983 is also subject to the one year limitation period of La. Civ. Code Art. 3536. Braden v. Texas A&M University System 636 F.2d 90 (5th Cir., 1981); Heyn v. Board of Supervisors of Louisiana State University 417 F. Supp. 603 (N.D. La. 1976), aff'd, 550 F.2d 1282 (5th Cir., 1977).

2.

After hearing the evidence the District Court concluded that appellant "offered no evidence whatsoever which in any way remotely infers that he was discharged because of his race." After reviewing the record the Court of Appeals concluded that the District Court was correct in so holding. The evidence showed that the Board discharged appellant because it believed that he had abandoned his position. Whether the Board was wrong in believing that Jones had abandoned his position is irrelevant to the Title VII claim as long as the belief, rather than racial animus, was the basis of the discharge. DeAnda v. St. Joseph

Hospital 671 F. 2d 850, 854 n.6. (5th Cir., 1982).

3.

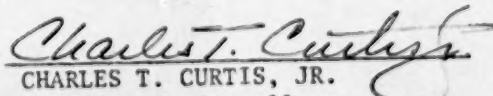
Appellant has alleged various state law claims including breach of contract and violation of the Louisiana Teacher Tenure laws. These claims were not pleaded in appellant's complaint nor were they mentioned in the pre-trial order. When appellant attempted to present evidence on these claims at trial, the Board objected on the grounds that the claims were not pleaded and that the pendant jurisdiction of the Federal Court had not been invoked. Because the state law claims were not properly presented in the trial court, these issues were properly not before the Court of Appeals. Daly v. Sprague 675 F. 2d. 716 at 722. (5th Cir., 1982).

CONCLUSION

The appellee submits that this Honorable Court should deny appellant's writ of certiorari or in the alternative, affirm the decision of the United States Court of Appeals for the Fifth Circuit because appellant failed to prove his claim of racial descrimination and appellant's allegation that his procedural due process rights had been violated were prescribed pursuant to Louisiana law. Further, appellant's various state law claims were not properly pleaded in the court below.

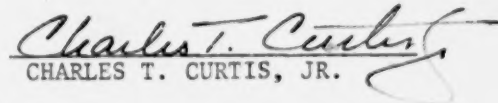
Both the District Court and the Fifth Circuit carefully considered each of appellant's allegations and found them all to be without merit. Accordingly, this Honorable Court should likewise deny appellant's writ.

Respectfully submitted,


CHARLES T. CURTIS, JR.
Attorney for Appellee
938 Lafayette Street
New Orleans, Louisiana 70113
Telephone: (504) 581-1422

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been forwarded to Hurie Jones, 2103 La Quinta Via, Harvey, Louisiana, 70058, by United States mails, postage prepaid and correct, this 4 day of May, 1983.


CHARLES T. CURTIS, JR.